

**REMARKS**

By this amendment, claims 1-24 are pending, in which claims no claims are canceled, currently amended, or newly presented. No new matter is introduced.

The final Office Action mailed July 24, 2006 rejected claims 1, 3-9, 11-16, and 18-22 under 35 U.S.C. § 102 as anticipated by *Seid et al.* (US 5,768,271), claim 23 as obvious under 35 U.S.C. § 103 based on *Seid et al.*, and claims 1-24 as obvious based on Applicant Admitted Prior Art (AAPA) in view of *Seid et al.*

Applicants respectfully traverse the rejections of claims 1-24 under 35 U.S.C §§ 102 and 103 as the applied art, individually or in combination, fails to anticipate or make obvious the many features of the pending claims.

Applicants appreciate the Examiner's detailed explanation (on pages 2 and 3 of the Office Action) of the rejection regarding Applicants' prior arguments. Applicants surmise that the Examiner bases his analysis on the premise that the claimed language "extra-VPN traffic" encompasses traffic other than the particular VPN including traffic associated with other VPNs. This reading permits the Examiner to argue, using the illustration of FIG. 1 of *Seid et al.*, that traffic can reach Node A from two different nodes, Node B of VPN1 and Node C of VPN2. First, *Seid et al.* does not go so far as to suggest that there is any coordination involved with sending certain traffic through Node B or Node C base on some router logic. Second, and more significantly, is that the Examiner appears to lose sight of the context in which the partitioning of traffic is needed in the first place: to prevent denial of service attacks, as positively claimed. Under the Examiner's interpretation, traffic of such attacks would be transmitted to another VPN, thereby degrading performance of that VPN. Given this consequence, Applicants question the reasonableness of the Examiner's interpretation of "extra-VPN traffic." "Although the PTO must give claims their broadest reasonable interpretation, this interpretation must be consistent

with the one that those skilled in the art would reach.” *In re Cortright*, 165 F.3d 1353, 1369, 49 USPQ2d 1464, 1465 (Fed. Cir. 1999).

For example, independent claim 1 recites:

1. (Previously Presented) A network system providing a virtual private network (VPN), said network system comprising:  
one or more egress routers having connections to an access network including an access link, wherein said one or more egress routers **transmit intra-VPN traffic to a destination host** belonging to the VPN from sources within the VPN **within a first access network logical connection for intra-VPN traffic** and **all extra-VPN traffic to the destination host** from sources outside the VPN within a **second access network logical connection for extra-VPN traffic**, separate from the first access network logical connection; and  
a plurality of ingress routers coupled to the one or more egress routers for communication utilizing a network-based VPN protocol that logically partitions intra-VPN and extra-VPN traffic, **such that denial of service attacks on said access link originating from sources outside the VPN are prevented.**

Given the totality of the claims, it is clear that *Seid et al.* fails to teach all of the above features. Therefore, Applicants respectfully request withdrawn of the anticipation rejection of claims 1, 3-9, 11-16, and 18-22.

With respect to the obviousness rejection of claim 23, Applicants submit that the Official Notice does not fill in the gaps of *Seid et al.*, and thus, a *prima facie* case of obviousness has not been established. Moreover, the Administrative Procedure Act requires the Patent Office to articulate and place on the record the "common knowledge" used to negate patentability. *In re Sang Su Lee*, No. 00-1158 (Fed. Cir., Jan. 18, 2002); *In re Zurko*, No. 96-1285 (Fed. Cir., Aug. 2, 2001).

Turning now to the obviousness rejection of claims 1-24 over APAA and in view of *Seid et al.*, Applicants submit that the AAPA does not cure the deficiencies of *Seid et al.* The Examiner, on page 10, acknowledges that “APAA does not disclose wherein intra-VPN and

extra-VPN are separated into a first and second logical connection, nor that the logical connections are partitioned such that denial of service attacks on said access link originating from sources outside the VPN are prevented.”

With respect to claims 2, 10 and 17, the Office Action on page 11 cites AAPA, page 4, paragraph [09] simply draws conclusion that “AAPA further discloses wherein the at least one of the plurality of ingress routers or the at least one or more egress routers logically partitions intra-VPN traffic and extra-VPN traffic using a differentiated services protocol to mark correspondingly the intra-VPN traffic and the extra-VPN traffic.” Paragraph [09] of Applicants’ Specification describes the general capabilities of the Diffserv protocol, without any mention of how the marking capability can be used to mark “intra-VPN traffic” and “ extra-VPN traffic.” To the extent that the Examiner is taking Official Notice of such fact, pursuant to MPEP § 2144.03, Applicants respectfully traverse the Official Notice and request the Examiner to produce references showing the claim features or withdraw the rejection as factually inadequate.

Further, the Examiner is reminded that the supposed AAPA is described to set up Applicants’ recognition of problems within the existing art. As stated by the CAFC, *In re Spinnoble* (CCPA, 1969), 160 USPQ 237:

“The court must be ever alert not to read obviousness into an invention on the basis of the applicant’s own statements; that is, we must view the prior art without reading into that art appellant’s teachings. ... The issue then is whether the teachings of the prior art would, in and of themselves and without the benefits of appellant’s disclosure, make the invention as a whole, obvious.... It should not be necessary for this court to point out that a patentable invention may lie in the discovery of the source of a problem even though the remedy may be obvious once the source of the problem is identified. This is part of the ‘subject matter as a whole’ which should always be considered in determining the obviousness of an invention under 35 USC 103 ....”

As stated in the Specification, within paragraph [12], Applicants recognize the following problem: "In view of the limitations attendant to conventional implementations of the Intserv and Diffserv standards, the present invention recognizes that it would be useful and desirable to provide a method, system and apparatus for data communication that support a communication protocol that, unlike conventional Intserv implementations, is highly scalable and yet protects against the DoS attacks to which conventional Diffserv and other networks are susceptible."

Therefore, Applicants respectfully request withdrawal of the obviousness rejection over the combination of *Seid et al.* and AAPA and request the indication of allowability of claims 1-24.

Therefore, the present application, as amended, overcomes the rejections of record and is in condition for allowance. Favorable consideration is respectfully requested. If any unresolved issues remain, it is respectfully requested that the Examiner telephone the undersigned attorney at (703) 425-8508 so that such issues may be resolved as expeditiously as possible.

Respectfully Submitted,

DITTHAVONG & MORI, P.C.

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Date

//Phouphanomketh Ditthavong//

Phouphanomketh Ditthavong  
Attorney/Agent for Applicant(s)  
Reg. No. 44658

10507 Braddock Road  
Suite A  
Fairfax, VA 22032  
Tel. (703) 425-8508  
Fax. (703) 425-8518